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THE REFERENDUM AND INITIATIVE:

THEIR RELATION TO THE INTERESTS OF LABOR IN SWITZERLAND AND IN AMERICA.

It is a curious fact that in Switzerland, almost alone among the countries north of the Alps, representative government did not arise spontaneously. In some other nations the elected assemblies were smothered by the growth of the monarchical power, but in Switzerland it may be said that they never developed at all. The reason for this is to be found in the condition of the cantons and their peculiar relation to each other; for they were divided into the rural cantons, which were small enough to permit legislation by means of *Landesgemeinde*, or mass meetings of all the citizens, and therefore needed no representative chambers; and into what may be called the city cantons, where the country districts came to be ruled by the dominant city, and the city by a few patrician families; while the confederation itself was so loosely organized that its diet was not a true legislative body, but rather a congress of ambassadors. It was not until after the French Revolution that representative institutions began to be copied from other countries, and the cantons did not get the full benefit of them before 1830. The result was that when elected assemblies were finally introduced, the Swiss were not accustomed to them, and had not learned to provide the needful checks and balances. They were jealous of the men they elected, looking on them as masters rather than servants of the public, and a feeling arose, especially in the German cantons, that the people ought to have a right to prevent abuses of power by their representatives. Hence, elected chambers had been instituted only a short time when the Referendum was devised in order to give the voters a direct check upon them.

The Referendum, as the name implies, is the reference of an act of the legislature to the people for ratification or rejection, and it may be used in either of two forms. It is sometimes provided that every law must be submitted to

popular vote, and in this case the Referendum is said to be compulsory. Sometimes, on the other hand, such a submission is required only when a certain number of voters demand it in writing, and under these circumstances the Referendum is said to be optional. Each of these forms is actually used in Switzerland. Thus, for changes in a constitution, whether Federal or Cantonal, the Referendum is always compulsory; and in some cantons it is compulsory for all laws; while in other cantons and in the confederation itself it is optional for ordinary laws.

In its actual working the Referendum is no empty formality, but a most important element in legislation. The federal laws furnish a good illustration of its use in the optional form. Here a popular vote must be taken on any law if thirty thousand voters demand it; and from 1874, when the system was introduced, to March, 1893, such a demand was made in the case of nineteen out of a total of one hundred and sixty-nine laws; that is, on the average, in the case of one law out of eight. Of these nineteen, the people ratified six and rejected thirteen, or about one-twelfth of all the statutes passed by the legislature. The effect of the Referendum in the compulsory form is even more striking, although it varies a good deal in the different cantons. In Zurich, one of the largest and most democratic, the people ratified ninety-seven and rejected thirty-one of the one hundred and twenty-eight acts passed by the legislature between 1869 and August, 1893. In Berne the proportion of laws rejected has been a trifle larger, while in Aargau it is nearly twice as great. In fact, in the cantons where the compulsory Referendum exists, the proportion of laws rejected varies from a little less than a quarter to a little less than half.*

These figures prove that the Referendum is an effective institution, for they show that it prevents the enactment of a great many laws which the people do not like; and hence it is important to consider the character of the laws that are

* This condition of things is true only of the German cantons. In the French cantons the Referendum has been adopted in the optional form, and is little used.

voted down. The history of popular voting in Switzerland reveals a marked tendency to reject radical measures, and this is a very instructive fact, because it means that the people are really more conservative than their representatives. To take a single illustration: in 1878 a law to give daughters an equal inheritance with sons in the estates of their parents was passed by the legislature of Zurich, but defeated at the Referendum by a vote of more than two to one; and it was not until nine years later that this simple act of justice was sanctioned at the polls. Strange as it may seem, the tendency to reject radical projects applies to labor laws and other measures designed to improve the condition of the working-classes, although laws of that kind are commonly believed to be highly popular with the vast majority of the people. For examples of this we may again refer to the canton of Zurich, whose citizens are largely engaged in manufacturing, and therefore furnish a peculiarly valuable index of the probable effect of the Referendum in other industrial communities where the suffrage is universal. In 1870 the people there rejected a cantonal law which reduced the period of work in factories to twelve hours a day, which protected the female operatives, and forbade the employment of children during the years when they were required to go to school. In 1877 they voted against a Federal factory law intended for a similar purpose. In the following year they rejected a cantonal law to establish a school of weaving, and in 1881 they voted down another law providing for the compulsory insurance of workmen against sickness, regulating their relations with their employers, and making the latter liable for injuries to their employees caused by accidents. Moreover, they have repeatedly rejected measures for increasing the amount of education in the public schools (1872, 1885, 1888, and 1891), and they have refused to sanction bills to provide free text-books for the children (1887 and 1888). All this does not mean that the people are certain to reject laws intended for the benefit of the working-classes; on the contrary, they voted in Zurich heavily in favor of the recent amendment to the federal constitution giving the confederation power to enact a statute on the compulsory

insurance of workmen. But it does mean that they are far less ready to sanction measures of this character than the legislature is to pass them.

The conservative nature of the Referendum was foreseen by a few shrewd statesmen, who objected to its introduction on the ground that it would impede progress; and, in fact, the Radicals to-day are less anxious for its extension than the Reactionaries. A reason for this result has been suggested by Sir Henry Maine in his "Popular Government," where he says (p. 97), "It is possible, by agitation or exhortation, to produce in the mind of the average citizen a vague impression that he desires a particular change. But when the agitation has settled down on the dregs, when the excitement has died away, when the subject has been threshed out, when the law is before him in all its detail, he is sure to find in it much that is likely to disturb his habits, his ideas, his prejudices, or his interests, and so, in the long run, he votes 'No' to every proposal." The same truth may be stated in a more concrete form. Every law designed for the benefit of the working-man involves, or rather is liable to involve, a present sacrifice on his part; but the sacrifice is not evident so long as the principle of the law is merely stated in general terms. It is easy, for example, for the working-man to understand the wisdom of forbidding the labor of children of immature years, but it is not easy for him to see how he gains anything by losing the wages his son has been earning in the mill. Hence, the same man may very well vote for a candidate or a party that proposes to enact a labor law, and yet find himself bitterly opposed to that very law when it is presented to him for approval. Moreover the Referendum places in the hands of employers a means of exerting a direct pressure upon their operatives which a secret ballot has not the slightest tendency to mitigate. The rejection of the first factory act in Zurich is said to have been largely due to the influence of the mill owners,* and a little reflection will show how they might bring about the defeat of a labor law. Sup-

* Stüssi, "Referendum und Initiative im Kanton Zurich," p. 49.

pose, for example, that an act limiting the hours of work in factories is passed by the legislature, and that a demand is made for a popular vote. Then suppose the employers announce that if the law is ratified they will be obliged to cut down wages. In such a case, many of the operatives, not caring to run the risk of a decrease in wages or a strike, will be likely to vote against the act and kill it.

The Referendum has a purely negative effect. It merely enables the people to reject laws passed by their representatives; but the Swiss feel that the legislature ought not to have the exclusive right to originate legislation, that the people ought to have power to propose laws directly, and for this purpose a proceeding has been devised called the Initiative. The method of operation is as follows: A certain number of voters have a right to demand that a measure they advocate shall be submitted to the people, whether the legislature is willing to pass it or not; and if the popular vote is affirmative the measure becomes a law, with the same force that it would have had if passed by the legislature and ratified at the Referendum. The idea of the right of everybody to take part in public affairs by proposing laws for the good of the country has something very attractive about it, but in practice it has not proved of value. This is shown by the experience of the Canton of Zurich, where the Initiative has been used more than anywhere else, and where, as we have seen, the Referendum has been very effective. Here the Constitution of 1869 authorized any five thousand voters to propose a law, and from that time through August, 1893, nineteen different measures were brought before the people in this way. Four of them the legislature advised the people to adopt, and of these two were ratified at the popular vote, and two were rejected; but of the other fifteen proposals which were disapproved by the legislature, only three were enacted by the people. One of these set up Houses of Correction for tramps, a measure the wisdom of which was much doubted; a second re-established the death penalty, but this came to nothing, for the people rejected at the Referendum the law that was prepared to carry it into effect; the third

abolished compulsory vaccination. Of the measures proposed and rejected at the polls, some were good and some bad, but they are of no consequence to us, for what we want to know is the effect of the Initiative in producing legislation. The net direct result in Zurich during twenty-four years has been the enactment of only three laws to which the legislature was opposed, and of these one was of doubtful value, about another the people seem to have changed their minds, and the third was clearly bad.

The confederation has made a short and, so far, not an altogether happy experiment with this institution. Any fifty thousand people have recently been given a right to propose a specific amendment to the constitution, but the first use that has been made of this privilege is not encouraging. The required number of voters demanded an amendment forbidding the slaughter of animals by bleeding, a measure whose real object was not to prevent cruelty, but to harass the Jews. The Federal Assembly urged the rejection of the bill as opposed to the principles of religious liberty guaranteed by the constitution, but it was nevertheless enacted by popular vote.

Whether the Referendum has, on the whole, been a benefit to Switzerland or not, it has certainly been a success in the sense that it has produced the result for which it was established. It seems to have brought out the real opinion of the people in regard to the laws submitted to them for ratification. But this cannot be said of the Initiative. It would be absurd to suppose that the popular longings of the citizens of Zurich are summed up in the three measures to which this institution has given birth in their canton; and it would be an insult to the Swiss to assert that they desired above all other things a petty persecution of the Jews. We are forced to conclude, therefore, either that the wants of the people are satisfied by the action of the legislature, and if so the Initiative is needless, or that it has not enabled them to express their real wishes, in which case it is a failure. The advocates of the Initiative in Switzerland admit that it has not yet developed much efficiency, but they hope for better results in the future.

Experience, however, does not indicate that it will prove valuable. It applies only to questions which the representatives of the people, who are quite sensitive to public opinion, refuse to pass, and it leaves no room for debate or for compromise and mutual concession. Hence the chance of enacting a law by this process is very small. The conception is bold, but in practice it is not likely to be of any great value to mankind; if, indeed, it does not prove to be merely a happy hunting-ground for cranks.

There has been a great deal of discussion of late upon the question whether it would be wise to adopt the Referendum in America. More correctly stated, however, the question should be whether its use ought to be extended, for not only does it exist here, but in its modern form it is older here than in Switzerland. As early as 1778 the General Court of Massachusetts submitted to the people a constitution, which they rejected, and two years later the present constitution was ratified by popular vote. New Hampshire adopted the practice about the same time; whereas in Switzerland no constitution was submitted to the people until this century, and the habit of taking a popular vote on ordinary laws developed later still.

Before discussing, therefore, an extension of the Referendum in this country, it is necessary to know how far it is already in use.* In the first place, the requirement of a ratification by the people for any change in a State constitution is now almost universal. In the second place, the Referendum has been applied in some States to a number of matters that do not in form involve any change in the constitution, but which are closely akin to constitutional questions. The power of the legislature to contract debts, for example, is often limited, any excess above the limit requiring a popular vote. The object of this is clear. The debt limit cannot be absolutely rigid, because occasions when it must be exceeded are sure to arise, and it would be highly inconvenient to prescribe a limit in the constitution, and require a formal

* Cf. Oberholzer, "The Referendum in America."

amendment for the temporary purpose of sanctioning an exception to the general rule. The use of the Referendum in this case is, therefore, merely a convenient method of dealing with a constitutional question where there is an obvious reason why the ordinary process of formal amendment should not be used. The same thing is true of the provisions which require a popular vote for the expenditure of money above a fixed limit, for the levy of certain taxes, and for the alienation of public property. In some States there are also provisions authorizing the legislature to submit to the people the question of woman suffrage or of proportional representation; and it is very common to provide that the capital of the State shall be determined in that way. All these matters are such as fall usually and properly within the province of the constitution, and the provision for a popular vote upon them may be regarded simply an informal method of amending that instrument.

These cases substantially include all those where a constitution authorizes the submission of laws to the people of the State, with one exception. After the banking mania of 1848, several of the Western States adopted provisions requiring a popular vote on all acts creating banks, although such acts are clearly not of a constitutional nature. This was a specific remedy for a particular social disease, and has scarcely been adopted at all outside of the States that suffered at that time, —a fact which seems to indicate that it is not in harmony with our institutions.

There is another class of laws that appear at first sight to present a second exception. I refer to the acts that deal with local questions, the so-called local option laws. But this is not a case of true Referendum, because it involves no appeal from the members of the legislature to their constituents. However strongly the majority of the people at large may dislike a measure, they are given no power to prevent its enactment. It becomes a law without regard to their wishes, and the question of its application in any particular district is decided solely by the voters of that district. Such a system is therefore only a method of local self-government in

which the administration of the affairs of a city, town, or county is intrusted to the whole body of inhabitants.

It may be stated, therefore, that, except for the anomalous case of the banking acts, the Referendum in the United States has been applied only to constitutional matters, and to others that are closely akin to constitutional matters. It may be observed, moreover, that the questions presented to the people are comparatively general and simple; and it must also be noticed that the popular vote is always compulsory, never depending upon a request on the part of the citizens. Now all this is very important, because, if the Referendum ought to be extended, it would presumably be wise to follow the lines along which it has developed naturally.

There are, indeed, a number of grave objections to the introduction in America of a general Referendum on all laws. In our political system, a careful distinction is drawn between constitutional and other laws, the former being the principles established by the people as the ultimate sovereign, the latter regulations made by its representatives within the limits of their authority. The power of the courts to hold statutes unconstitutional rests on this distinction, for in exercising their high prerogative, the courts are maintaining against the legislature the fundamental principles which the people themselves have enacted. But if all laws were alike ratified by the people, this distinction would disappear, and there would be no reason for regarding one class of laws as more sacred than another. The courts would therefore lose their power to hold statutes unconstitutional, and, indeed, they have no such power in Switzerland. With the fall of this keystone of our system the checks and balances of our government would disappear, and the character of our institutions would be radically changed. In short, an application of the Referendum to ordinary laws could not be engrafted upon our political system without changing its very nature. At the present moment the labor leaders in America are in the habit of speaking of the courts as mere bulwarks of capital, instruments to defeat the aims of the working-classes. But such a view arises from a grave misconception. The courts are the guardians of the law and of

the rights of every one who is not strong enough to protect himself. It is their mission to preserve and expand the principles that are developed by the toilsome process of social evolution, and in our system, where the most deep-seated of these principles are embodied in the constitutions, it is the duty of the courts to prevent an arbitrary violation of them. Surely, a destruction of the limitations of our government which would allow absolute power to be wielded by any group of men who could get control of the State would not be a benefit to the working-classes. Such a change would offer in America a temptation for an unscrupulous use of money which no Referendum could effectually counteract; and, indeed, there can be no doubt that a decay of confidence in the integrity and authority of the courts would lead to a vast increase of corruption of all kinds. The strength of the courts is, therefore, of at least as much permanent importance to labor as to accumulated wealth.

Another objection to a general extension of the Referendum here arises from our traditions. Except for the broad and simple questions involved in constitutional matters, the experience of our people has been confined to passing judgment on men and on general lines of policy. They have not been in the habit of considering the wisdom of particular statutes, or determining the need for the various appropriations. Nor would it be possible for them to do so. In a community as complex as ours legislation is a very intricate matter, and requires a great deal of careful study. This is far less true in Switzerland, where the cantons are minute compared with our States, and where the variety of social, commercial, and industrial interests is much smaller. Moreover, the Swiss statutes are less elaborate than ours, the executive having power to supply the details by means of ordinances. Hence the Referendum in America would impose on the voters a far more difficult task than it does in Switzerland.

This consideration brings us to the practical question of the form in which the Referendum could be used here. In no Swiss canton does the number of laws presented to the people average ten a year, and in most places there are only half that

number even where the Referendum exists in the compulsory form. But in the American States the acts passed in a single year are far too numerous to permit the people to consider them independently or vote intelligently upon them. They often run up into the hundreds, and fill a volume so large that the voter would hardly have time to read it through if he sacrificed all his leisure for the purpose. No doubt the quantity of our legislation is excessive, but, even if it were very materially reduced, a general Referendum in the compulsory form would still be out of the question. There remains the optional form; but this the Swiss themselves do not like so well, because the agitation involved in the effort to collect the necessary signatures has a tendency to inflame political prejudices, and thus prevent a true expression of public opinion. In America this form is open to peculiar objections owing to the large size of the States, and to the great development of political parties. It would probably be used chiefly in the case of laws that had aroused a good deal of party feeling and had been carried as party measures. In such cases the signatures could easily be collected by means of the party machinery, without which the task would be difficult. It is likely, therefore, that the Referendum in this form would be used mainly as a means of annoying the party in power by delaying legislation, and would become a party weapon. Viewed in this light it is hardly to be desired.

Moreover, there is not the same need of a Referendum here that there is in Switzerland. The Swiss have no executive veto, no judicial process for setting aside unconstitutional laws, and in the cantons only a single legislative chamber. Hence they are much more exposed to the danger of hasty law making, and have a greater need of a veto in the hands of the people.

It is perhaps needless to remark that none of these considerations apply to the use of local popular voting as a means of municipal government. Such a system does not tend to obscure the distinction between constitutional and other laws. It brings before the people questions which, if sometimes intricate, are at least comparatively familiar; and it does not present such a quantity of subjects that they cannot be con-

sidered separately. In fact, as an extension of the principle of the town-meeting to larger communities, and as a method of educating the voters and increasing their interest in local government, the system seems to offer a possible remedy for the sad condition of our great cities.

In discussing the Referendum from the stand-point of the interests of labor, we must remember that it is essentially a check on legislation, a method by which the people can reject measures, but not in any sense a means of passing laws; and since at the present day the working-classes are not in danger of new legislation hostile to their special interests, it is not clear how the Referendum could be a serious benefit to them. On the contrary, it would probably result in the rejection of labor laws at the polls; for chimerical as such a danger might seem at first sight, the experience in Zurich shows that it is very real. The Referendum, therefore, could not produce legislation for the benefit of the working-classes, and would be likely to hinder it. The instrument designed for the popular creation of laws is the Initiative; but it is hardly necessary to discuss this institution at length. It has not been a success in its native country, and there is no reason to suppose it would work any better elsewhere. It may be noticed, moreover, that, of the few laws it has produced in Switzerland, not one, so far as I know, has been passed in the interest of labor.

If there is any one class in the community to which the Referendum and Initiative would be an advantage, it would not appear to be the working-class. But we must place ourselves on a broader ground than this. A political system that is not adapted to a community, that is not good for it as a whole, is bad in the long run for every part of it, and ultimately is worst of all for the poor. We may go farther still, and say that, if the Referendum and Initiative were instruments by which the laboring class could legislate for its own special benefit, they would be mischievous. Class legislation enacted by a class for the exclusive benefit of that class is absolutely inconsistent with democracy, which is government by the whole people for the benefit of the whole people. If history proves anything, it proves that a democracy in which

any one class becomes too powerful is doomed. Such a government is certain either to be replaced by a despotism or to degenerate into anarchy, which means suffering for every one, and above all for those whose daily bread depends on their daily toil. If this country is to play a glorious part in the world, if future generations are to point to it as one of the great forces in the progress of mankind, it must make a success of democracy. Other nations may seek refuge under different forms of government. Germany can take shelter under her monarchs, France can return to a Cæsar, England can, perhaps, restore her aristocracy, but, as far as human foresight can reach, America has no resource but democracy, and to make democracy a success, the classes must learn to understand each other and to have mutual forbearance and sympathy. If we do not learn this lesson, our retribution will be decrepitude and ruin, and that retribution will have been deserved.

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THE CONSCIENCE: ITS NATURE AND ORIGIN.

I. IN any matter of investigation, it is a great point gained to have obtained a clear idea as to what the precise problems to be investigated are. Kant's most conspicuous service to ethical science consists in his having secured a practically universal recognition for the fact that one of the things that any theory of the nature and origin of the conscience must account for is the absence of all consideration of personal consequences, in this world or the next, in action that can claim the sense of duty as its motive. Cudworth, indeed, in his day had entered a protest no less emphatic than Kant's against such conceptions of duty as Paley afterwards set forth; but it is due to Kant that they can never in their bald and undisguised form, at any rate, be set forth again. While, however, the mercenarian theory, as regards its application to a future life, is very properly scouted by most ethical writers at the present day, another